



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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August 23, 2022

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Re: Your Request for Advice  
**Our File No. A-22-064**

Dear Ms. Straus:

This letter responds to your request for advice on behalf of the Burbank-Glendale-Pasadena Airport Authority (“Authority”) regarding the conflict of interest provisions of the Political Reform Act and Government Code Section 1090, et seq.<sup>1</sup> Please note that we are only providing advice under the Act and Section 1090, not under other general conflict of interest prohibitions such as common law conflict of interest. Prior to this request your office sent requests which were assigned file numbers “22-048,” and “22-053, 054, and 055.” This request supersedes the earlier requests, and those requests are withdrawn.

Also, note that we are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice.

We are required to forward your request regarding Section 1090 and all pertinent facts relating to the request to the Attorney General’s Office and the Los Angeles County District Attorney’s Office, which we have done. (Section 1097.1(c)(3).) We did not receive a written response from either entity. (Section 1097.1(c)(4).) We are also required to advise you that, for purposes of Section 1090, the following advice “is not admissible in a criminal proceeding against any individual other than the requestor.” (See Section 1097.1(c)(5).)

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<sup>1</sup> The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18104 through 18998 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

## QUESTIONS

1. Does Buro Happold Consulting Engineers, Inc., (“Buro Happold”) meet the definition of an independent contractor subject to Section 1090 due to the firm’s preconstruction services to the Authority for the Replacement Passenger Terminal Project (“RPT Project”)?
2. Does RS&H California, Inc., (“RS&H”) meet the definition of an independent contractor subject to Section 1090 due to the firm’s preconstruction services to the Authority for the RPT Project?
3. Is either Buro Happold or RS&H prohibited from bidding on the subsequent RPT contract under the conflict of interest provisions of the Act?

## CONCLUSIONS

1. No, based on the facts presented, Buro Happold did not have duties to engage in or advise on public contracting in regard to the Authority’s Request for Qualifications (“RFQ”) or Request for Proposals (“RFP”) for the RPT Project that Buro Happold was expected to carry out on Authority’s behalf. Therefore, it does not meet the definition of an independent contractor subject to Section 1090.
2. No, based on the facts presented, RS&H did not have duties to engage in or advise on public contracting in regard to the Authority’s RFQ or RFP for the RPT Project that RS&H was expected to carry out on Authority’s behalf. Therefore, it does not meet the definition of an independent contractor subject to Section 1090.
3. No. Under the Act’s conflict of interest provisions, even to the extent that any employee of RS&H or Buro Happold qualifies as a consultant for purposes of the Act, the employee would not be prohibited from taking part in the bidding for the subsequent RPT contract pursuant to Regulation 18704(d)(3). As provided in this subdivision, a consultant is not “making, participating in making, or attempting to influence a governmental decision” in negotiating terms and conditions of an employment or consulting contract.

## FACTS AS PRESENTED BY REQUESTER<sup>2</sup>

The Burbank-Glendale-Pasadena Airport is a 555-acre facility in Southern California. It is owned and operated by the Authority, which was created in 1977 by the three cities. The Authority has no employees, other than airport police, and utilizes TBI Airport Management, Inc. (“TBI”) as a contractor to provide services and personnel.

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<sup>2</sup> As noted above earlier requests were prepared by several contractors and subcontractors involved in providing preconstruction services to the Authority for the project that is the subject of this letter. The requests contained statements of facts that were sent with the Authority’s approval. For the contractors that are at issue in this request, we have reviewed the facts presented in the letters and included this information in our analysis. As noted below, we contacted you for clarifications where there were inconsistencies in the facts and for additional information.

In order to improve safety at the Airport and comply with federal runway standards, the Authority intends to demolish the current passenger terminal and build a 14-gate 355,000 square foot replacement passenger terminal (“RPT Project”). Additionally, subject to budget constraints, the RPT Project will include construction of ancillary improvements including parking facilities, a replacement airline cargo building, a ground service equipment maintenance building, and a replacement aircraft rescue and firefighting/police/emergency operations center building.

To secure the ability to construct the RPT Project, the Authority obtained numerous entitlements from, and executed a development agreement with, the City of Burbank in January 2017. In May 2019, the Authority Commission decided to use the progressive “design-build” delivery method for the RPT Project because it provides a high level of cooperation and coordination between the Authority, the design-builder, and other interested parties; enhanced integration of project design and project construction; and the development of the project cost through a collaborative, open book process resulting in a mutually accepted guaranteed maximum price.

#### *Background: Design-Builder Procurement*

The first major procurement for the RPT Project is a solicitation for a design-builder to provide planning, design, construction, and commissioning services. The scope of work for the design-build agreement will include stakeholder coordination, field-investigations, engineering, architecture, design, permitting, preconstruction, construction, commissioning, operational-readiness, closeout, and project management.

This procurement will be a two-step competitive negotiation process administered by TBI staff with assistance from Jacobs Program Management Co., which provides program management and associated services for the RPT Project. First a Request for Qualifications (“RFQ”) will be issued, to be followed by a Request for Proposals (“RFP”) issued to shortlisted respondents.

On May 20, 2022, the Authority issued the RFQ for progressive design-build services for the RPT Project. The RFQ invites Statements of Qualifications from qualified design-build firms or teams to provide planning, design, construction, and commissioning services for the RPT Project. The Authority anticipated issuing the RFP to shortlisted respondents in July 2022 and awarding the design-build agreement in December 2022. It is anticipated that the design-build agreement will be \$900 million in value and five years in duration.

#### *RPT Project Preliminary Services*

Prior to issuing the RFQ, the Authority engaged several contractors and subcontractors to perform preliminary work on the RPT Project. The Authority understands that these contractors and subcontractors are also interested in participating in the RFQ and bidding on the RFP. The concern is whether their involvement in the prior service agreements prohibits their participation in the project moving forward. This request focuses on the two contractors that contracted directly with the Authority, Buro Happold and RS&H, that have performed the most significant work on the RPT Project to date. Your request included the contracts/service agreements between the Authority and the two contractors.

*Buro Happold*

Buro Happold is a private engineering and consulting firm. Buro Happold worked on the concept validation for the RPT Project. In January 2018, the Authority retained the firm through a Professional Services Agreement (“Buro Happold Agreement”) to provide “concept validation and refinement studies for the replacement passenger terminal and related projects” to be completed by June 2018. The Buro Happold Agreement’s Scope of Work does not reference engaging in or advising on public contracts on behalf of the Authority. Rather, the Agreement states:

Consultant is, and shall at all times remain as to the Authority, an independent contractor. Consultant shall have no power to incur any debt, obligation, or liability on behalf of the Authority or to act otherwise on behalf of the Authority as an agent. Neither the Authority nor any of its officers, employees, agents or volunteers shall have control over the conduct of Consultant except as set forth in this Agreement.

The scope of Buro Happold’s work was to determine the feasibility of building the RPT Project in the northeast quadrant and to prepare a cost estimate for the RPT Project.<sup>3</sup> The contractor’s “final deliverable” as stated in the Buro Happold Agreement was a “Project Definition Book” which was later retitled as a “Concept Validation Report.”<sup>4</sup> Buro Happold’s concept validation involved the following tasks: independent validation of conceptual requirements; submission of new input, refinement, and dimensional criteria; development of unit cost estimates and quantities; preparation of alternative imaging; and incorporation of the City of Burbank’s conditions of approval into a comprehensive refined conceptual plan.

You state that Buro Happold provided the following services for this work: Project Management, and Structural and Mechanical, Electrical, and Plumbing (“MEP”) Engineering and that it “did not perform any formal engineering or construction-related services.” Additionally, the Buro Happold Agreement provided states that Buro Happold’s services also included: Structural Engineering, Facade Design, “Visuals,” Planning, Architecture and Landscape, Civil Engineering, Roadway Engineering, Parking and Baggage Consulting, Demolition Consulting and Cost Estimation. The Agreement’s Scope of Work details, for example, under the task of “Project Leadership and Oversight” that Buro Happold was to “[p]rovide overall project coordination of all consultants” ... and “[a]ct as day to day contact with Client.” For Airfield and Terminal Planning Services, Buro Happold, with subcontractor Airbiz, was to perform services

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<sup>3</sup> You clarified by email that Airbiz was a subcontractor to Buro Happold, and the two contractors performed this work together.

<sup>4</sup> Although the 2018 Concept Validation Scope of Work states that Buro Happold’s “proposed deliverable” is a “Project Definition Book,” you clarified by email that “the Authority determined that Project Definition Book was not the appropriate name for Burro Happold’s final deliverable, so the name of the deliverable was changed to a Concept Validation Report. Jacobs, the Program Manager of the RPT Program, is preparing a Program Definition Book.”

such as “[p]roject vision development-will guide qualitative review of elements that impact passenger, employee and community experience.”

Buro Happold’s Concept Validation Report concluded that the proposed RPT Project is feasible and “works” in the Authority’s preferred location (northeast quadrant). It states the merits of the “proposed program” in comparison to a “2016 Concept” (which decreased areas for items such as restrooms and increased area for items such as baggage and security). The report provides a proposed layout and identifies opportunities to be addressed in the design phase. Lastly, the report provides a cost model presenting total program cost, as well as costs by type (i.e., design costs, direct construction) and element (i.e., replacement terminal, public parking, concession fit out).

In her May 12, 2022, letter Buro Happold Principal, Patti Harburg-Petrich, states:

After our scope of work was completed, [the Authority] engaged another consultant, AECOM, and then Jacobs, to provide programming for the RPT project. Jacobs is also preparing a Program Definition Book that will be the basis of the Request for Proposals (RFP), which will be a Design-Build procurement. Buro Happold had no participation whatsoever in the development of the Program Definition Book; nor any participation in the anticipated scope of work and the anticipated RFP in general.

In response to our request for additional information regarding the Authority’s understanding of Buro Happold’s role to date, you provided the following information by email: Buro Happold’s Concept Validation Report was not used in the creation of the RFQ or RFP. Buro Happold’s refined conceptual plan was work they performed outside of the scope of the concept validation and was not used in the creation of the RFQ or RFP. As to whether Buro Happold acted as a de facto official of the Authority in any capacity during its contract, the Authority states that it did not, and that it did not take on any roles on behalf of the Authority. You noted that Patrick Lammerding, Deputy Executive Director of the Authority, acted as the point of contact and was responsible for the entirety of the Concept Validation study. You state that none of the individual employees from Buro Happold were designated under the Authority’s Conflict of Interest Code.

### *RS&H*

RS&H, a private engineering, architecture, and consulting firm, worked on the Preliminary Design, the Environmental Impact Report (“EIR”), and the Environmental Impact Statement (“EIS”) for the RPT Project under three separate agreements for services.

*Preliminary Design:* In December 2015, the Authority retained RS&H through a Design Services Agreement to perform preliminary design services for two development review applications to the City of Burbank for the RPT Project. These applications were for the Authority’s preferred B-6 Adjacent Property (Northeast Quadrant) replacement terminal project and the Authority’s Southwest Quadrant replacement terminal alternative project. The Design Services Agreement states that the services were to be performed in accordance with the Authority’s Executive Director, Dan Ferger’s instructions. RS&H prepared the pre-design plans and elevations necessary for the Authority to submit complete design review applications to the City of Burbank

for the RPT Project in its final work product, “Replacement Passenger Terminal Development Review” issued in June 2016.

*Environmental Impact Report (“EIR”)*: In November 2015, the Authority retained RS&H through a Professional Services Agreement to lead the preparation of an EIR for the RPT Project in accordance with the California Environmental Quality Act (“CEQA”).<sup>5</sup> The Authority’s Dan Ferger served as Executive Director and the Authority’s Director of Noise, Environmental, and Transportation Programs, Mark Hardyman, served as the EIR’s Contract Administrator. The EIR is a six-volume informational document that identifies: (i) potentially significant impacts of the RPT Project on the environment; (ii) how any significant impacts on the environment can be avoided or significantly lessened; (iii) any significant and unavoidable adverse impacts that cannot be mitigated; and (iv) reasonable alternatives to the RPT Project.

In June 2016, the Authority Commission certified the Final EIR for the RPT Project. RS&H provided Engineering, Project Management, Environmental, and Quality Assurance/Quality Control services for the EIR. RS&H completed tasks for the EIR such as: (1) conducting, coordinating, and facilitating the kickoff meeting; (2) developing the project descriptions; (3) creating a public involvement plan; (4) preparing the Notice of Preparation; (5) documenting existing conditions at the proposed project site; (6) analyzing impacts associated with the three replacement terminal alternatives; and (7) preparing, revising, and publishing the Draft EIR and Final EIR.

Neither the Preliminary Design contract nor EIR contract make reference to engaging in or advising on public contracts on behalf of the Authority. Rather, the Agreements state:

Consultant is, and shall at all times remain as to the Authority, an independent contractor. Consultant shall have no power to incur any debt, obligation, or liability on behalf of the Authority or to act otherwise on behalf of the Authority as an agent. Neither the Authority nor any of its officers, employees, agents or volunteers shall have control over the conduct of Consultant except as set forth in this Agreement.

*Environmental Impact Statement (EIS)*: In December 2018, the Federal Aviation Administration (“FAA”) initiated the federal EIS process to evaluate the RPT Project’s impact on the environment. The RPT Project involves federal actions and approvals from the FAA that are subject to review under the National Environmental Policy Act (“NEPA”). The FAA selected RS&H to assist with the EIS. In accordance with federal policy requiring the airport sponsor to retain the EIS consultant, RS&H provided such assistance to the FAA under a Professional Services Agreement with the Authority dated April 16, 2018, and with an expiration date of April 30, 2021.<sup>6</sup> The Deputy Executive Director of Planning and Development for the Authority, Patrick Lammering, was the designated contract administrator and the Executive Director for the Authority, Frank R. Miller, served in his role as Executive Director for these services.

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<sup>5</sup> We provide no analysis regarding this agreement in terms of compliance with Section 1090.

<sup>6</sup> We provide no analysis regarding this agreement in terms of compliance with Section 1090.

In May 2021, the FAA issued the Final EIS for the RPT Project. The Final EIS found that the RPT Project in the preferred location would have either no impacts or no significant impacts on more than a dozen environmental categories that the FAA analyzed under NEPA. RS&H assisted with the following components of the EIS: Project Management, NEPA Documentation, Airport Planning, and Airport Engineering. RS&H completed tasks for the EIS such as the following: (1) coordinating and assisting with the kickoff meeting; (2) developing a public involvement plan; (3) creating and hosting a project website; (4) preparing the Notice of Intent; and (5) preparing, revising, and publishing the Draft EIS and Final EIS.

In its May 2, 2022, letter to the Commission requesting advice in conjunction with the Authority, RS&H states that the above work for the Authority “did not give us responsibility for public contracting. Our work delivered planning documents, an EIR under CEQA, and an EIS under NEPA.”

In response to our request for additional information regarding the Authority’s understanding of RS&H’s role to date, you provided the following information by email: RS&H’s work did not form the basis for the RFQ and RFP, as these are each based on a set of design criteria and design-builder requirements being defined by the Program Management contractor. Further, RS&H did not participate in determinations related to the RFQ or RFP. The services performed differ from the type of work to be performed in the design and construction phase of the project. As to RS&H’s actions during these services, you state that RS&H did not represent the Authority in any capacity and did not have responsibilities for public contracting on behalf of the Authority in providing the above services. In regard to whether any of the individual employees from RS&H were designated under the Authority’s Conflict of Interest Code or otherwise acted as a “consultant” as defined in Regulation 18700.3, you state that none of the RS&H employees were designated, and none meet the definition of a consultant.

## ANALYSIS

### *Section 1090*

Section 1090 generally prohibits public officers or employees, while acting in their official capacities, from making contracts in which they are financially interested. Section 1090 is concerned with financial interests, other than remote or minimal interests, that prevent a public officer or employee from exercising absolute loyalty and undivided allegiance in furthering the best interests of their agencies. (*Stigall v. City of Taft* (1962) 58 Cal.2d 565, 569.) Section 1090 is intended not only to strike at actual impropriety, but also to strike at the appearance of impropriety. (*City of Imperial Beach v. Bailey* (1980) 103 Cal.App.3d 191, 197.)

Under Section 1090, the prohibited act is the making of a contract in which the official has a financial interest. (*People v. Honig* (1996) 48 Cal.App.4th 289, 333.) A contract that violates Section 1090 is void. (*Thomson v. Call* (1985) 38 Cal.3d 633, 646.) The prohibition applies regardless of whether the terms of the contract are fair and equitable to all parties. (*Id.* at pp. 646-649.)

Importantly, Section 1090 prohibits the use of a public position for self-dealing. (See *Hub City Solid Waste Services, Inc. v. City of Compton* (2010) 186 Cal.App.4th 1114,

1124 [independent contractor leveraged his public position for access to city officials and influenced them for his pecuniary benefit]; *California Housing Finance Agency v. Hanover* (2007) 148 Cal.App.4th 682, 690 [“Section 1090 places responsibility for acts of self-dealing on the public servant where he or she exercises sufficient control over the public entity, i.e., where the agent is in a position to contract in his or her official capacity”]; *Lexin v. Superior Court* (2010) 47 Cal.4th 1050, 1090 [The purpose of Section 1090 is to prohibit self-dealing, not representation of the interests of others].)

### *Independent Contractors Subject to Section 1090*

In 2017, the California Supreme Court recognized “the Legislature did not intend to categorically exclude independent contractors from the scope of section 1090” in its language applying the prohibition to “public officers and employees.” (*People v. Superior Court (Sahlolbei)* (2017) 3 Cal.5th 230, 238.) In this opinion, the Court held that Section 1090 applies to those independent contractors who are “entrusted with ‘transact[ing] on behalf of the Government.’” (*Id.* at p. 240, emphasis added, quoting *Stigall, supra*, 58 Cal.2d at p. 570.) On this issue, the *Sahlolbei* Court explained:

So, for example, a stationery supplier that sells paper to a public entity would ordinarily not be liable under section 1090 if it advised the entity to buy pens from its subsidiary because there is no sense in which the supplier, in advising on the purchase of pens, was transacting on behalf of the government.

In the ordinary case, a contractor who has been retained or appointed by a public entity and whose actual duties include engaging in or advising on public contracting is charged with acting on the government’s behalf. Such a person would therefore be expected to subordinate his or her personal financial interests to those of the public in the same manner as a permanent officer or common law employee tasked with the same duties.

(*Sahlolbei, supra*, at p. 240.)

Notably, the Court specifically rejected a “considerable influence standard” (i.e., that contractors come within the scope of Section 1090 when they occupy positions “that carry the potential to exert ‘considerable influence’ over public contracting”) in determining whether Section 1090 applies to a particular independent contractor. (*Id.* at p. 244-45, referencing *California Housing Finance Agency, supra*, 148 Cal.App.4th at p. 693.) The Court stated:

As we have explained, independent contractors come within the scope of section 1090 when they have duties to engage in or advise on public contracting that they are expected to carry out on the government's behalf.

Applying this standard, in *Taxpayers Action Network v. Taber Construction, Inc.*, (*Taber*) (2019) 42 Cal.App.5th 824, the court found that where a school district contracted with Taber Construction, a contractor, to provide preconstruction services, it was not precluded from entering into a second contract with the same contractor for construction of the project when there was “no evidence that Taber was transacting on behalf of the School District when it provided those



preconstruction services” and instead, the evidence showed that “Taber was transacting business as a provider of services to the School District.” (*Id.* at p. 838.) The court based this finding on the fact that Taber had a contractual duty to provide preconstruction services, not to select a firm to complete the project, and Taber provided those services (planning and setting specifications) in its capacity as the intended provider of construction services to the School District, not in a capacity as a de facto official of the School District.” (*Ibid.*)

Applying this standard in past advice letters, we have looked to evidence as to the role played by the contractor. For example, we found that an independent contractor involved in design and construction services on a housing project, including construction of public streets, was not subject to Section 1090 in regard to a subsequent construction contract for additional public streets, where no facts suggested that the town hired the contractor to engage in or advise on public contracting on behalf of the town. (See *Morris* Advice Letter, No. A-22-003.) The analysis states:

For example, the DDA [the contract] did not require PWC [the contractor] to prepare an RFP for the construction of those streets of the Parcel to be constructed by the Town; nor did it require PWC to assist the Town in selecting a contractor for that project. Instead, the DDA required PWC to construct the Parcel’s affordable housing, design all of the Parcel’s infrastructure, and construct certain portions of that infrastructure. PWC provided these services in its capacity as the intended provider of design and construction services to the Town, not in an official capacity status for the Town - in other words, PWC has done business in its private capacity as a provider of services *to* the Town under the DDA.”

(*Morris* Advice Letter, No. A-22-003, p. 8)

In contrast, where the facts showed that an independent contractor played a role as an advisor to the county in drafting its cannabis marketing Request for Proposals and advised that the county restrict the types of applicable bidders, we concluded the independent contractor was subject to Section 1090. The contractor was in a role such that its duty was to advise the county regarding public contracting on the county’s behalf. It is notable that the independent contractor’s advice resulted in a considerable advantage to the independent contractor and its affiliate organization in the county’s subsequent RFPs. (*Adair* Advice Letter, No. A-21-137.)

Accordingly, the key determination in extending Section 1090’s prohibitions to an independent contractor in this matter is whether the independent contractor had duties to engage in or advise on public contracting - duties that the contractor was expected to carry out on Authority’s behalf.

### *Buro Happold*

While Buro Happold provided extensive preconstruction services to the Authority, including project management and establishing design criteria, there are no facts suggesting it had responsibilities for public contracting on behalf of the Authority. To the contrary, the Buro Happold Agreement expressly prohibited the company from incurring any debt, obligation, or liability on behalf of the Authority or acting on behalf of the Authority.

Additionally, there are no facts indicating that Buro Happold acted as a de facto official of the Authority. Rather, the facts state that the contractor acted under the Authority's Executive Director, who was "responsible for the entirety of the Concept Validation Report." Both the Authority and the contractor state that the Concept Validation Report was not used in the creation of the RFP or RFQ. Based on this information, Buro Happold provided its preconstruction services in its private capacity to the Authority and its actual duties did not include engaging in or advising on the RFQ or RFP on behalf of the Authority.

Accordingly, Buro Happold is not an independent contractor that is subject to Section 1090 due to its previous services to the Authority on the RPT Project.

### *RS&H*

As with Buro Happold, the facts provided by the Authority and RS&H establish that while providing extensive preconstruction services to the Authority on the Preliminary Design, the EIR and EIS, RS&H did not have responsibilities for public contracting on behalf of the Authority. Additionally, there are no facts indicating that RS&H acted as a de facto official of the Authority. RS&H's contracts with the Authority also prohibited the company from incurring any debt, obligation, or liability on behalf of the Authority or acting on behalf of the Authority. The facts state that the contractor acted under the Authority's Executive Director, and Director of Noise, Environmental and Transportation Programs, and the Deputy Executive Director of Planning and Development, respectively, on the three projects. Both the Authority and the contractor state that the RS&H's services performed differ from the type of work to be performed in the design and construction phase of the project and did not form the basis for the RFQ and RFP, which are each based on a set of design criteria and design-builder requirements being defined by the Program Management contractor.

Based on this information, RS&H provided its preconstruction services in its private capacity to Authority and its actual duties did not include engaging in or advising on the RFQ or RFP on behalf of the Authority. Accordingly, RS&H is not an independent contractor that is subject to Section 1090 due to its previous services to the Authority on the RPT Project.

### *The Act*

Under the Act, a public official has a prohibited conflict of interest and may not make, participate in making, or in any way use or attempt to use the official's position to influence a governmental decision when the official knows or has reason to know the official has a disqualifying financial interest. (Section 87100.) For the prohibition on participation to apply, the contractor, or their employee, must meet the definition of a "public official" that is "participating in making a government decision."

The Act defines a "public official" as "every member, officer, employee, or *consultant* of a state or local government agency." (Section 82048, *emphasis added*.) Regulation 18700.3 defines a "consultant" under the Act as an individual who works pursuant to a contract with an agency, and either (1) makes government decisions as described in Regulation 18700.3(a)(1); or (2) serves in a staff capacity and either (a) participates in governmental decisions (as defined in Regulation

18704(a) and (b)) or (b) performs the same or substantially all the same duties that would otherwise be performed by an individual in a position listed in the agency's conflict of interest code.

However, under the Act's conflict of interest provisions, a consultant is not "making, participating in making, or attempting to influence a governmental decision" in negotiating terms and conditions of an employment or consulting contract. (Regulation 18704(d)(3).) Accordingly, even to the extent that any employee of RS&H or Buro Happold qualifies as a "consultant" for purposes of the Act, the employee would not be prohibited from taking part in the subsequent RPT contract decision under the Act's conflict of interest provisions.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Dave Bainbridge  
General Counsel

**L. Karen Harrison**

By: L. Karen Harrison  
Senior Counsel, Legal Division

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